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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120312181-2279-01]

RIN 0648-BC00

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; Emergency Rule Extension

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action extended.

SUMMARY: NMFS is extending the temporary rule that delayed or revised several portions of the Pacific Coast Groundfish Fishery Trawl Rationalization Program (program) regulations. This emergency rule extension is necessary to enable the National Marine Fisheries Service (NMFS) to comply with a court order requiring NMFS to reconsider the initial allocation of Pacific whiting (whiting) to the shorebased Individual Fishing Quota (IFQ) fishery and the at-sea mothership fishery. This extension of the temporary, emergency rule affects the transfer of Quota Share (QS) and Individual Bycatch Quota (IBQ) between QS accounts in the shorebased IFQ fishery, and severability in the mothership fishery, both of which will be delayed until NMFS can complete reconsideration of whiting allocations in the shorebased IFQ fishery and the at-sea mothership fishery.

DATES: The expiration date of the temporary rule published August 1, 2012 (77 FR 45508) is extended from January 28, 2013, through July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, 206-526-4491; (fax) 206-526-6736; [Ariel.Jacobs@noaa.gov](mailto:Ariel.Jacobs@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

This action extends the Reconsideration of Allocation of Whiting, Delay of Relevant Regulations Rule, referred to as “RAW 1”. RAW 1 delayed or revised several provisions of the Pacific coast trawl rationalization program. Background on this rule was provided in the proposed rule, published on May 21, 2012 (77 FR 29955), and in the final rule, published on August 1, 2012 (77 FR 45508), and is not repeated here. This action would extend the effectiveness of the final rule, which:

(1) Delayed the ability to transfer QS and IBQ between QS accounts in the shorebased IFQ fishery in order to avoid complications that would occur if QS permit owners in the shorebased IFQ fishery were allowed to transfer QS percentages prior to completion of the whiting allocation reconsideration;

(2) Delayed the requirement to divest excess QS amounts for the shorebased IFQ fishery and the at-sea mothership fishery so that QS permit owners would have sufficient time to plan and arrange sales of excess QS, as originally recommended by the Council for this provision of the trawl rationalization program;

(3) Delayed the ability to change mothership catcher vessel (MS/CV) endorsement and catch history assignments from one limited entry trawl permit to another in order to avoid complications that would have occurred had permit owners been allowed to transfer ownership of catch history assignments prior to completion of the reconsideration; and

(4) Modified the issuance provisions for quota pounds (QP) for the beginning of fishing year 2013 to preserve NMFS' ability to deposit the appropriate final amounts into QS accounts based on any recalculation of QS allocations. In January 2013, NMFS deposited into accounts an interim amount of QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for 2013, as reduced by the amount of QP for whiting trips associated with the whiting QS issued based on the limited entry permit history that qualified for an initial allocation , and for species caught incidentally in the whiting fishery (including lingcod, Pacific cod, canary, bocaccio, cowcod, yelloweye, Pacific ocean perch, widow, English sole, darkblotched, sablefish N. of 36°N lat., yellowtail N. of 40°10' N. lat., shortspine N. of 34°27' N. lat., minor slope rockfish N. of 40°10' N. lat., minor slope rockfish S. of 40°10' N. lat., minor shelf rockfish N. of 40°10' N. lat., minor shelf rockfish S. of 40°10' N. lat., and other flatfish). The remainder of the interim QP will be deposited in QS accounts at the start of the whiting primary season.

NMFS is also advising the at-sea mothership fishery that the response to the court order may impact processor obligations and cooperative (coop) formation, if whiting catch history assignments are recalculated. NMFS will announce a process for correcting data, if necessary, following the public comment period for the RAW 2 proposed rule (78 FR 72, January 2, 2013).

#### Potential Impact on Processor Obligations and Coop Formation

NMFS advises the at-sea mothership fishery that the response to the court-ordered reconsideration may impact processor obligations and coop formation if whiting catch history assignments are recalculated. NMFS will announce any changes to the amount of catch history assignments associated with MS/CV-endorsed limited entry trawl permits by April 1, 2013. The mothership sector has until March 31, 2013, to submit their coop permit applications to NMFS

for that fishing year. The coop permit application includes a list of the catch history amounts associated with specific MS/CV-endorsed limited entry permits and which MS permit those amounts are obligated to. Because coop permit applications may be submitted before NMFS has made its final determination on the 2013 catch history assignments associated with MS/CV-endorsed permits, participants in the mothership fishery should be aware that this proposal may potentially impact their processor obligations, coop formation, and coop permit application. NMFS does not anticipate a need for regulatory changes to address these potential impacts and will work with any MS coop permit applicants if there are changes in catch history assignments from that noted in the 2013 coop permit application. For example, in the initial administrative determination for any 2013 MS coop permit application, NMFS will notify the coop manager of any changes in catch history assignments for MS/CV-endorsed permits associated with that coop.

NMFS also considered whether to allow limited entry permit transfers (i.e., changes in permit ownership) for all limited entry trawl endorsed permits, except for those with a catcher/processor endorsement, for a period of time during the reconsideration. This allowance would simplify reissuance of QS permits in the shorebased IFQ fishery or catch history assignments on MS/CV-endorsed limited entry trawl permits in the at-sea mothership fishery. After assessing this step, NMFS has determined that it is not necessary because the reallocation rule likely will have no planned application process. The initial allocation had a lengthy application process that necessitated not allowing limited entry permit (LEP) transfers while NMFS reviewed applications. For any revised reallocation, NMFS likely will issue an initial administrative determination (IAD), but not an application; these details will be developed as part of the reallocation rulemaking, if necessary. Accordingly, there should not be a need to

freeze LEP transfers. If NMFS reissues QS permits and/or catch history assignments on MS/CV- endorsed limited entry trawl permits, NMFS likely will issue those permits or catch history assignments to the QS account owner of record with NMFS at the time of reissuance. Because the RAW 2 rule (78 FR 72, January 2, 2013) is not proposing any reallocation, it did not include these additional details.

#### Classification

This emergency rule extension is published under the authority of the Magnuson-Stevens Act.

OMB has determined that this action is not significant for the purposes of Executive Order 12866.

This extension to an emergency/interim rule is exempt from the procedures of the Regulatory Flexibility Act because this extension rule is issued without opportunity for prior notice and opportunity for public comment.

The Assistant Administrator finds it is unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment on this emergency rule extension. In the initial emergency rule published on May 21, 2012 (77 FR 29955), NMFS requested, and subsequently received, comments on the rulemaking. Therefore, the agency has the authority to extend the emergency action for up to 186 days beyond January 28, 2013. This would extend the emergency action to through August 2, 2013.

The measures of this emergency rule extension remain unchanged from the measures contained in the initial emergency rule that delayed or revised portions of the trawl program regulations pending completion of the reconsideration of the allocation of whiting for the shoreside IFQ and mothership sectors of the program. This extension must be in place during the

2013 whiting fishing season because the reconsideration is still underway and failing to extend the emergency rule would be counter to the NMFS and the Council's efforts to manage the fishery until the reconsideration has been completed. The emergency action authority under 305(c)(3) allows NMFS to extend the provisions of the emergency action rule if there was a public comment period and the Council is currently addressing the reconsideration. NMFS has met both of these provisions.

NMFS solicited public comment during the 30-day comment period on the measures contained in the initial emergency action and extended by this action. The comments received were considered and were addressed in the preamble of the emergency rule. Therefore, for the reasons outlined above, the Assistant Administrator finds it is unnecessary and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule extension. Furthermore, NMFS finds good cause to waive the 30-day delay in effectiveness because any lapse in effectiveness of this temporary rule could potentially jeopardize NMFS' ability to comply with the Court order in Pacific Dawn.

No Federal rules have been identified that duplicate, overlap, or conflict with this emergency rule extension. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (see ADDRESSES).

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper

Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior “no jeopardy” conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green

sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

As Steller sea lions and humpback whales are also protected under the Marine Mammal Protection Act, incidental take of these species from the groundfish fishery must be addressed under MMPA section 101(a)(5)(E). On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions (77 FR 11493, Feb. 27, 2012). NMFS is currently developing MMPA authorization for the incidental take of humpback whales in the fishery.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.



Dated: January 11, 2013.

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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